A

# Federal Land Development Authority & Anor v Tan Sri Hj Mohd Isa bin Dato' Hj Abdul Samad & Ors

B

HIGH COURT (KUALA LUMPUR) — WRIT SAMAN NO WA-22NCVC-843–11 OF 2019
MOHD NAZLAN J
15 JULY 2021

C

*Civil Procedure — Proceedings — Consolidation — Application for — Consolidation with trials with two different cause of action — Whether there was substantial overlap in the issues in present suit and defamation suits — Whether there was prejudice if the application was refused since the common issues were tried in the defamation suits without the participation of the plaintiffs and the defendants in present duit — Whether there was a prejudice if the findings on these common issues in the defamation suits were binding on the plaintiffs even though they were not parties to the defamation suits — Whether there was res judicata and prevent the plaintiffs from litigating these common issues in present suit if they had been determined first in the defamation suit — Rules of Court 2012 O 4 r 1*

D

E

The plaintiffs filed the present writ action alleging conspiracy to defraud against 21 defendants ('Suit 843'). There were consolidated suits related to this case, namely; (a) The defamation suit between the seventh and the second defendant ('Suit 26'); (b) The defamation suit related to vaoious news articles between seventh defendant and the New Straits Times Press (M) Bhd ('NSTP') and its journalist Che Wan Badrul Alias ('Suit 31'); (c) the defamation suit between seventh defendant and NSTP and another of its journalist, Ahmad Suhael Adnan ('Suit 22'). NSTP and its two journalists are not parties in the instant suit. All three Suits 26, Suit 31 and Suit 22 were directed to be consolidated and tried together (collectively, 'the defamation suits'). One year later, on the plaintiffs in this Suit 843 filed this application ('encl 206') under O 4 r 1 of the Rules of Court 2012 ('the ROC 2012') for the defamation suits be tried immediately after the trial of this Suit 843. The plaintiffs contended that there were some common questions of law or fact arising in Suit 843 and the defamation suits. The issues for determination were: (a) whether there was substantial overlap in the issues in Suit 843 and defamation suits as can be seen from the trial documents in the defamation suits which substantially related to the dealings between the plaintiffs, the seventh and eighth defendants, the Semarak lands and the issues in Suit 843; (b) whether the plaintiff would suffer prejudice if the application was refused since the common issues were tried in the defamation suits without the participation of the plaintiffs and the defendants in Suit 843, this court might not be able to reach a proper finding

F

G

H

I

on those issues; (c) whether there was a prejudice if the findings on these common issues in the defamation suits were binding on the plaintiffs even though they were not parties to the defamation suits; (d) whether there was a a risk that the defendants in this Suit 843 may raise the issue of res judicata and prevent the plaintiffs from litigating these common issues in Suit 843 if they had been determined first in the defamation suit.

**Held**, dismissing the application with costs:

(1) The court found that the would be no common question of law for the Suit 843 which alleges conspiracy and fraud since the claim here was contractual in nature and involves issues concerning the formation of contract whilst for the defamation suits on the other hand were based on claims of tortious liability. These were wholly different principles of law. In Suit 843, the plaintiffs were challenging the validity of the agreements and instruments and of conspiracy to injure, involving fraud and breach of fiduciary duties against the first 20 defendants the causes of action for the defamation suits were predicated on the law of tort. The subject matter were the defamatory statements allegedly published by the defendants therein. The issues to be determined in the defamation suits would be the usual in any defamation action as established under the law which revolve around the questions whether the statements were defamatory, whether they refer to the plaintiffs, whether they were published to a third person, and whether the defendants are entitled to the defences pleaded (see paras 19–25).

(2) It would be incorrect for the plaintiffs to contend that if they were successful in Suit 843, then the defamation suits would fail because the defendants in the defamation suits would be able to succeed in their defences of justification and fair comment. Regardless of the outcome of Suit 843, the defendants in the defamation suits would still have to prove their defences on the basis of the established principles of the law on defamation. As such, there were no real risks of inconsistent findings or res judicata should the trial of the defamation suits was to precede that of Suit 843 (see paras 28–29).

(3) The reliefs sought in the defamation suits were an injunction restraining the defendants from further speaking, publishing or causing to be published the alleged defamatory statements and special, general and aggravated or exemplary damages. The key reliefs sought in Suit 843 were a declaration that the agreements and instruments executed were unenforceable, null, void ab initio and damages against the 20 defendants. It could not be denied that whilst the rights and reliefs claimed in the defamation suit — confined to damages and in Suit 843 arose out of the same transaction, they were entirely different in nature. Because the defamation suits were tortious in nature and the reliefs, if

awarded, were based on entirely different principles to those in Suit 843, which were contractual in nature and related to issues surrounding the formation of contracts, the plaintiffs could not be prejudiced if the defamation suits precede the determination of Suit 843. Nor could there be true inconsistency since the suits involved different principles of law (see paras 31–34).

(4) The paramount consideration in this application was whether there would be risks of inconsistent findings and decisions in respect of the common issues if Suit 843 and the defamation suits were tried separately. There was the weighty issue about the different capacities of the parties in the different suits. For some, their roles were reversed. For instance, the plaintiffs in the defamation suits were the fifth to seventh defendants in Suit 843. This means that a consolidation would result in a cross action. At the same time, the defendants in the defamation suits were not even parties in Suit 843. All the parties in the defamation suits were against this application. The applicants, namely the plaintiffs in Suit 843, who asked for Suit 843 to be heard before the defamation suits, were not even parties to the defamation suits. When there are parties in one suit who are not parties in the other suit, the application should be refused. Out of the total 26 parties in the defamation suits and Suit 843, there were only four parties that were present in both. These 22 parties would suffer prejudice and embarrassment if this application was allowed. Although it may seem that time and costs would be saved, that would not actually be the case in view of the different plaintiffs, different causes of action, different issues and different arguments. Indisputably, a consolidation in this case would not outweigh any savings on time and costs, and serve only to complicate and delay the just, expeditious and economical disposal of especially the defamation suits and Suit 843 (see paras 37, 40–43 & 46).

(5) Yet another concern with consolidation or having the suits heard together or one immediately after the other was the question of legal representation of the various parties. The facet of complexity was the different set of lawyers involved in the two groups of proceedings. There were 14 firms of solicitors acting for their respective clients in Suit 843 and three firms of solicitors acting for their respective clients in the defamation suits. The separate representations would likely render the consolidation inconvenient if not impractical, resulting in an unnecessary waste of judicial time, of costs as a large number of solicitors would be required to be present in court for case managements of matters which do not concern their clients, as well as other challenges such as the difficulty of fixing trial dates (see paras 57–58).

(6) These separate representations would likely render the consolidation inconvenient if not impractical, resulting in unnecessary waste of precious judicial time, of costs as a large number of solicitors will be

required to be present in court for case managements of matters which do not concern their clients, as well as other challenges such as the difficulty of fixing trial dates in view of the large number of parties and solicitors involved, and the situation where the solicitors represent the 21 defendants in the Suit 843 will have to hear and examine the evidence and testimony given by witnesses in open court in the Suit 843 and the defamation suits, and vice versa. Certain defendants in the Suit 843 are also witnesses in the defamation suits. The plaintiffs in Suit 843 only filed this application when the court was ready to fix new trial dates for the defamation suits. No convincing or reasonable explanation was proffered to justify this late filing when Suit 843 was filed about one year prior and where the defamation suits were instituted even earlier, about one year before the filing of Suit 843. The plaintiffs could also be said to be potentially guilty of laches for the delay in the filing of this application. Their averment that they only came to know about the defamation suits on 12 November 2020 was difficult to be accepted, given that the very first of the defamation suits was filed on 4 June 2018, some two and a half years prior. It was also unfair to have the defamation suits hanging over the heads of the parties, probably potentially indefinitely because of the uncertainty as to when Suit 843 would be ready for trial (see paras 60–63).

(7) Given the situation on the status of the Suit 843 and the defamation suits, it was not unfair or wrong to contend that if this application was allowed, the parties in the defamation suits would most probably have to endure a long wait before they were given the opportunity of being heard or having the merits of their case adjudicated on. That was simply and patently unfair. Resort to O 4 r 1 of the ROC was plainly unsuited in a situation where one of the suits is at an advanced stage of the proceedings, in comparison to the other. The defamation suits were ready for trial and ought to have started on 26 October 2020 if not for the Movement Control Order in force then. This was in contrast to Suit 843 which had not even reached the stage of the close of pleadings. The defamation suits should be allowed to proceed in a just, expeditious and economical manner unimpeded by the status of Suit 843 (see paras 65–67).

**[Bahasa Malaysia summary**

Plaintif memfailkan tindakan saman ini untuk kausa tindakan konspirasi menipu 21 defendan ('Saman 843'). Terdapat saman yang digabungkan yang berkaitan dengan kes ini, iaitu; (a) saman fitnah antara defendan ketujuh dan kedua ('Saman 26'); (b) saman fitnah yang berkaitan dengan artikel berita palsu antara defendan ketujuh dan New Straits Times Press (M) Bhd ('NSTP') dan wartawannya Che Wan Badrul Alias ('Saman 31'); (c) saman fitnah antara defendan ketujuh dan NSTP dan seorang lagi wartawannya, Ahmad Suhael Adnan ('Saman 22'). NSTP dan dua wartawannya bukan pihak dalam saman

ini. Ketiga-tiga saman 26, Saman 31 dan Saman 22 diarahkan untuk digabungkan dan dibicarakan bersama (secara kolektif, 'saman fitnah'). Setahun kemudian, plaintif di dalam Saman 843 memfailkan permohonan ini ('lampiran 206') di bawah A 4 k 1 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') untuk saman fitnah itu dibicarakan sejurus selepas perbicaraan Saman ini 843. Plaintif berhujah bahawa terdapat beberapa persoalan undang-undang atau fakta yang timbul di dalam Saman 843 dan saman fitnah. Isu-isu untuk penentuan mahhkamah ini adalah: (a) sama ada terdapat pertindihan di dalam isu-isu dalam Saman 843 dan saman fitnah tersebut seperti terkandung di dalam dokumen perbicaraan di dalam saman fitnah yang berkaitan dengan urusan antara plaintif, defendan ketujuh dan kelapan, tanah Semarak dan isu-isu dalam Saman 843; (b) sama ada plaintif akan mengalami prejudis sekiranya permohonan tersebut ditolak kerana isu-isu biasa telah dibicarakan di dalam saman fitnah tanpa penglibatan plaintif dan defendan di dalam Saman 843. Oleh yang demikian, mahkamah ini mungkin tidak dapat mencapai dapatan yang betul mengenai isu-isu tersebut; (c) sama ada terdapat prejudis sekiranya penemuan mengenai isu-isu biasa dalam saman fitnah ini mengikat plaintif walaupun mereka bukan pihak dalam saman fitnah tersebut; (d) sama ada terdapat risiko bahawa defendan dalam Saman 843 ini boleh membangkitkan isu res judicata dan menghalang plaintif daripada membangkitkan isu-isu biasa di dalam Saman 843 sekiranya ianya telah ditentukan terlebih dahulu dalam saman fitnah tersebut.

**Diputuskan**, menolak permohonan dengan kos:

(1) Mahkamah ini mendapati bahawa tiada persoalan undang-undang untuk Saman 843 yang memplidkan kausa tindakan konspirasi dan penipuan kerana tuntutan di sini bersifat kontrak dan melibatkan isu-isu mengenai pembentukan kontrak manakala untuk saman fitnah sebaliknya adalah berdasarkan tuntutan liabiliti tort. Ini adalah prinsip undang-undang yang sama sekali berbeza. Di dalam Saman 843, plaintif mencabar kesahihan perjanjian dan instrumen dan konspirasi yang mendatangkan kerugian yang melibatkan penipuan dan pelanggaran tugas fidusiari terhadap 20 defendan pertama penyebab tindakan saman fitnah tersebut berasaskan pada undang-undang tort. Perkara tersebut adalah kenyataan fitnah yang diterbitkan oleh defendan. Isu-isu yang akan ditentukan dalam saman fitnah tersebut adalah perkara biasa di dalam mana-mana prosiding fitnah seperti yang ditetapkan di bawah undang-undang yang merujuk kepada soalan sama ada kenyataan tersebut fitnah, sama ada mereka merujuk kepada plaintif, sama ada ianya diterbitkan kepada orang ketiga, dan sama ada defendan berhak kepada pembelaan merayu (lihat perenggan 19–25).

(2) Plaintif terkhilaf dalam menghujahkan bahawa sekiranya Saman 843 berjaya dibuktikan, maka saman fitnah tersebut akan gagal kerana defendan dalam saman fitnah tersebut akan dapat berjaya di dalam

pembelaan mereka terhadap justifikasi dan komen adil. Walaubagaimanapun keputusan Saman 843, defendan dalam saman fitnah tesebut masih perlu membuktikan pembelaan mereka berdasarkan prinsip undang-undang yang ditetapkan mengenai fitnah. Oleh itu, tiada isu penemuan yang tidak konsisten atau res judicata sekiranya perbicaraan saman fitnah tersebut mendahului Saman 843 (lihat perenggan 28–29).

(3) Relif yang di pohon di dalam saman fitnah tersebut adalah injunksi yang menghalang defendan daripada meneruskan ulasan, menerbitkan atau menyebabkan terbitan kenyataan fitnah yang mewujudkan ganti rugi khas, umum dan teruk atau teladan. Relif utama yang dipohon di dalam Saman 843 adalah perisytiharan bahawa perjanjian dan instrumen yang dilaksanakan tidak boleh dikuatkuasakan, batal, ab initio dan tuntutan ganti rugi terhadap 20 defendan. Ianya tidak dapat dinafikan bahawa walaupun hak dan relief yang dituntut dalam saman fitnah - terhad kepada ganti rugi dan dalam Saman 843 timbul daripada transaksi yang sama, ianya sama sekali berbeza. Oleh kerana saman fitnah tersebut bersifat tort. Relifnya sekiranya diberikan, berdasarkan prinsip yang sama sekali berbeza kepada mereka dalam Saman 843, yang bersifat kontrak dan berkaitan dengan isu-isu yang mengelilingi pembentukan kontrak, plaintif tidak boleh diprejudiskan sekiranya saman fitnah tersebut mendahului prosiding Saman 843. Juga, tiada isu tidak konsisten kerana saman tersebut melibatkan prinsip undang-undang yang berbeza (lihat perenggan 31-34).

(4) Pertimbangan utama di dalam permohonan ini adalah sama ada terdapat risiko penemuan dan keputusan yang tidak konsisten berhubung dengan isu-isu sekiranya Saman 843 dan saman fitnah tersebut dibicarakan secara berasingan. Terdapat isu mengenai kapasiti yang berbeza dari pihak-pihak dalam saman yang berbeza. Bagi beberapa orang, peranan mereka bertukar. Sebagai contoh, plaintif dalam saman fitnah tersebut adalah defendan kelima hingga ketujuh di dalam Saman 843. Hal ini menunjukkan bahawa penggabungan kes-kes akan menghasilkan tindakan silang. Pada masa yang sama, defendan dalam saman fitnah tersebut bukan pihak di dalam Saman 843. Semua pihak dalam saman fitnah tersebut menentang permohonan ini. Pemohon, iaitu plaintif di dalam Saman 843, yang memohon Saman 843 didengar sebelum saman fitnah tersebut, bukan pihak dalam saman fitnah tersebut. Apabila terdapat pihak dalam satu saman yang bukan pihak dalam saman lain, permohonan tersebut harus ditolak. Daripada jumlah 26 pihak dalam saman fitnah dan Saman 843, hanya terdapat empat pihak yang hadir di dalam kedua-duanya. 22 pihak ini akan mengalami prejudis sekiranya permohonan ini dibenarkan. Walaupun nampaknya masa dan kos dijimatkan, hal tersebut sebenarnya tidak akan berlaku memandangkan terdapat plaintif yang berbeza. Hal ini kerana kausa tindakan yang

berbeza, isu yang berbeza dan hujah yang berbeza. Tidak dapat dipertikaikan, penggabungan kes-kes ini dapat mendatangkan penjimatan pada masa dan kos dan hanya merumitkan dan menangguhkan pelupusan kes secara adil, cepat dan ekonomik terutamanya saman fitnah dan Saman 843 (lihat perenggan 37, 40–43 & 46).

(5) Isu lain berkenaan penggabungan atau saman tersebut didengar bersama atau berturutan adalah persoalan perwakilan undang-undang pelbagai pihak. Kerumitannya adalah terdapat peguam yang berbeza yang terlibat di dalam kedua-dua kumpulan prosiding. Terdapat 14 firma peguamcara yang bertindak untuk anak guam masing-masing di dalam Saman 843 dan tiga firma peguamcara yang bertindak untuk anak guam masing-masing dalam saman fitnah tersebut. Peguam yang berasigan ini mungkin akan menyebabkan penggabungan tersebut menyusahkan dan mengakibatkan pembaziran masa kehakiman yang tidak perlu. Ianya mendatangkan kos yang tinggi kerana peguam akan dikehendaki hadir di mahkamah untuk pengurusan kes perkara-perkara yang tidak berkaitan dengan anak guam mereka dan mewujudkan kesukaran menetapkan tarikh perbicaraan (lihat perenggan 57–58).

(6) Perwakilan peguam berasingan ini mungkin akan menyebabkan penggabungan tersebut menyusahkan dan mengakibatkan pembaziran masa mahkamah. Ianya mewujudkan kos yang tinggi kerana sebilangan besar peguam akan dikehendaki hadir di mahkamah untuk pengurusan kes perkara-perkara yang tidak berkaitan dengan anak guam mereka, serta cabaran lain seperti kesukaran menetapkan tarikh perbicaraan memandangkan sejumlah besar pihak dan peguam yang terlibat, dan keadaan di mana peguam mewakili 21 defendan dalam Saman 843 perlu mendengar dan memeriksa keterangan dan keterangan yang diberikan oleh saksi di mahkamah terbuka di dalam Saman 843 dan saman fitnah tersebut. Defendan-defendan tertentu dalam Saman 843 juga merupakan saksi dalam saman fitnah tersebut. Plaintif di dalam Saman 843 hanya memfailkan permohonan ini apabila mahkamah bersedia untuk menetapkan tarikh perbicaraan baru untuk saman fitnah tersebut. Tiada alasan munasabah untuk membenarkan pemfailan ini apabila Saman 843 difailkan setahun lebih awal. Plaintif juga boleh dikatakan melewatkan pemfailan permohonan ini. Hujahan bahawa mereka hanya mengetahui mengenai saman fitnah pada 12 November 2020 tidak boleh diterima, memandangkan saman fitnah pertama difailkan pada 4 Jun 2018, kira-kira dua setengah tahun sebelumnya. Ia juga tidak adil untuk mempunyai saman fitnah yang tergantung ke atas pihak-pihak kerana ketidakpastian mengenai bila Suit 843 akan di dengar di perbicaraan (lihat perenggan 60–63).

(7) Melihat kepada status Saman 843 dan saman fitnah tersebut, adalah

tidak adil atau salah untuk memutuskan bahawa sekiranya permohonan ini dibenarkan, pihak-pihak di dalam saman fitnah tersebut mungkin perlu menunggu lama sebelum mereka diberi peluang untuk didengar. Ianyalah tidak adil. Alternatif untuk relif A 4 k 1 KKM jelas tidak sesuai dalam keadaan di mana salah satu saman berada di peringkat lanjutan prosiding, berbanding dengan yang lain. Saman fitnah tersebut telah sedia untuk dibicarakan dan sepatutnya bermula pada 26 Oktober 2020. Namun, telah berlaku Perintah Kawalan Pergerakan yang berkuatkuasa pada ketika itu. Hal ini berbeza dengan Saman 843 yang habis peringkat kes rayuan. Saman fitnah tersebut hendaklah dibenarkan untuk diteruskan secara adil, cepat dan ekonomik tanpa melibatkan Saman 843 (lihat perenggan 65–67).]

**Cases referred to**

*Ahmad Amryn bin Abd Malek & Ors v Bursa Malaysia Securities Bhd* [2021] 8 MLJ 948; [2021] 2 CLJ 222, HC (refd)
*Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid* [1979] 2 MLJ 244, FC (refd)
*Datuk Chen Lip Keong & Anor v Datuk Mohd Fathi bin Haji Ahmad and another action* [1994] 1 MLJ 1, HC (refd)
*Hiwood United Sdn Bhd v All Season Realty Sdn Bhd & Ors* [2018] MLJU 735; [2018] 1 LNS 743, HC (refd)
*Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd* [2019] 2 MLJ 816; [2019] 6 CLJ 292, CA (refd)
*MBf Capital Bhd & Anor v Tommy Thomas & Anor* [1998] MLJU 506; [1998] 3 CLJ Supp 390, HC (refd
*MCAT Gen Sdn Bhd v Celcom (Malaysia) Berhad* [2007] 8 MLJ 277, HC (refd)
*Ng Joo Soon @ Nga Ju Soon v Devechem Holdings (M) Sdn Bhd and Ors* [2010] MLJU 1854, HC (refd)
*Osaka Resources Sdn Bhd & Ors v Foo Holdings Sdn Bhd and another appeal* [2014] 1 MLJ 461, CA (refd)
*Sykt Multi Wood v Foosan Timber Industries Sdn Bhd & Anor* [1992] 3 CLJ Rep 623, HC (refd)

**Legislation referred to**

Land Development Act 1956 s 3(3)(c)
Rules of Court 2012 O 4 r 1

*Kumar Kangasingam (CS Mong and Medha Ong with him) (Lee Hishammuddin Allen & Gledhill) for the plaintiff.*
*Mohd Hafarizam bin Harun (Norhazira Abu Haiyan with him) (Mohd Hafarizam Harun) for the first defendant.*
*Ranjit Singh (Ranjit Singh & Yeoh) for the second defendant.*
*Mohd Munzeer bin Zainul Abidin (Hifdzi Salmiah Kee Hamisah & Co) for the third defendant.*

*Azhar A Ali (Arman & Co) for the fourth defendant.*
*RK Sharma (Amrit Pal Singh, Austen Pereira and Ng Jun Wei with him) (Amrit & Company) for the fifth, sixth, seventh and eighth defendants.*
*Nur Shuhada (Rhiza & Richard) for the 11th defendant.*
*Anita Chan (Azim Tunku Farik & Wong) for the 12th, 13th, 14th and 15th defendants.*
*Vishal Kumar (Hanani Hadi with him) (James Monteiro) for the 16th defendant.*
*Premman Gopal (Omar Ismail Hazman & Co) for the 18th defendant.*
*Husin Razak (Mohd Irwan Mohd Mubarak) for the 19th defendant.*
*Nur Syazlin (Lope Maizura) for the 20th defendant.*
*Nur Suraya Amir (Timbalan Pendakwa Raya, Jabatan Peguam Negara) for the 21st defendant.*
*Ken St James (Jonathan with him) (Ken St James) in WA-23CY-26-06/2018, WA23CY-31-06/2018 and 23CY-22-04/2019 for the plaintiff.*
*Rueben Mathiavaranam (Angeline with him) (TH Liew & Partners) in WA23CY-31-06/2018 and 23CY-22-04/2019 for the defendant.*
*Ranjit Singh (Nicholas Yap with him) (Daniel Wong) in WA23CY-31-06/2018 for the defendant.*

**Mohd Nazlan J:**

INTRODUCTION

**[1]** This is an application filed by the plaintiffs for the present suit to be tried together with a set of three other suits under O 4 r 1 of the Rules of Court 2012. At the conclusion of the hearing via *Zoom*, the application, which was opposed by all defendants in this suit and all parties in the other suits, was dismissed, and the principal grounds for the decision were highlighted to the parties. This judgment contains the full reasons for my decision.

KEY BACKGROUND FACTS

**[2]** On 4 June 2018, Synergy Promenade Sdn Bhd ('Synergy Promenade') filed a defamation action ('Suit 26') against Tan Sri Sharil Ab Samad. The former is the seventh defendant in the instant suit whilst the latter is the second defendant.

**[3]** On 12 June 2018, Synergy Promenade filed a suit against New Straits Times Press (M) Bhd ('NSTP') and its journalist Che Wan Badrul Alias ('Suit 31') for alleged defamation for publishing various news articles.

**[4]** On 17 May 2019, Synergy Promenade filed another defamation action against NSTP and another of its journalist, Ahmad Suhael Adnan ('Suit 22'). NSTP and its two journalists are not parties in the instant suit.

**[5]** Pursuant to Orders dated 13 June 2019 and 16 January 2020, all three Suits 26, Suit 31 and Suit 22 were directed to be consolidated and tried together (collectively, 'the defamation suits'). A

**[6]** On 14 November 2019, the plaintiffs filed the instant writ action alleging conspiracy to defraud against 21 defendants ('Suit 843'). It is to be noted that the fifth, sixth and seventh defendants in this Suit 843 are the plaintiffs in the defamation suits. B

**[7]** One year later, on 27 November 2020, the plaintiffs in this Suit 843 filed this application under O 4 r 1 of the Rules of Court 2012 ('the RC 2012') for the defamation suits be tried immediately after the trial of this Suit 843. This is the instant encl 206. C

THE PRINCIPAL GROUNDS IN SUPPORT OF THE APPLICATION D

**[8]** The first point advanced by the plaintiffs in support of their application is the argument that there are some common questions of law or fact arising in Suit 843 and the defamation suits.

**[9]** These include whether the approval of the Minister pursuant to s 3(3)(c) of the Land Development Act 1956 had been obtained in respect of the KLVC Project and the relevant development agreement, whether the appointment of Synergy Promenade as the master developer of the KLVC Project was properly carried out, whether the defendants committed fraud or conspiracy to defraud the first plaintiff, whether the transfer or acquisitions of the first plaintiff's Semarak lands by the seventh and eighth defendants was wrongful and illegal, and whether the first plaintiff received any payment or monetary consideration in respect of the sale and transfer of its Semarak lands under the relevant sale and purchase agreements and the memorandum of transfer. E F G

**[10]** The plaintiffs then argued that there is substantial overlap in the issues in Suit 843 and defamation suits as can be seen from the trial documents in the defamation suits which substantially relate to the dealings between the plaintiffs, the seventh and eighth defendants, the Semarak lands and the issues in Suit 843. H

**[11]** The factual assertions made in the witness statements of the second and fifth defendants (in the defamation suits) substantially relate to the dealings between the plaintiffs, the seventh and eighth defendants, the Semarak lands and the issues in Suit 843. This Suit 843 and the defamation suits would both require a determination of the issues common to the suits. I

**[12]** This is especially when all the defendants in the defamation suits are

relying on the defences of justification and fair comment which require a determination of the true facts. Apart from the alleged defamatory statements in the defamation suits, both Suit 843 and defamation suits involve dealings or disputes between among others the plaintiffs, the fifth to the eighth defendants concerning the KLVC Project and the related disputed agreements and instruments.

**[13]** Reference is made by the plaintiffs to the decision of the Court of Appeal in *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd* [2019] 2 MLJ 816; [2019] 6 CLJ 292 where the requirements under O 4 r 1 were held to have been satisfied given the existence of common facts and issues in the two suits involved. The Court of Appeal also held:

> [13] In conclusion, we have to reiterate that it would be unjust to both parties to allow their respective claims to go before two different judges whose decisions may conflict with each other, and this probable outcome must be avoided at all cost.

**[14]** It was also submitted by the plaintiffs that that they will suffer prejudice if the application is refused since among others, if the common issues are tried in the defamation suits without the participation of the plaintiffs and the defendants in Suit 843, this court may not be able to reach a proper finding on those issues. There is also prejudice if the findings on these common issues in the defamation suits are binding on the plaintiffs even though they are not parties to the defamation suits.

**[15]** There is additionally a risk that the defendants in this Suit 843 may raise the issue of res judicata and prevent the plaintiffs from litigating these common issues in Suit 843 if they have been determined first in the defamation suit. On top of that the plaintiffs also posited that if they are separately tried, some of these key individuals would be likely to be summoned to appear as witnesses in both Suit 843 and defamation suits to give evidence substantially on the same issues of fact.

**[16]** This application is resisted by all the defendants in this Suit 843 and by all the litigants in the defamation suits. Most of these parties have furnished written submissions setting out their grounds for opposing the application and some have also submitted to that effect during the hearing.

## EVALUATION ANDFINDINGS OF THIS COURT

**[17]** The starting point of this analysis must be the provisions of O 4 r 1 of the RC 2012 which read as follows:

> 4 Consolidation of proceedings
>
> 1 Consolidation of causes or matters (O 4 r 1)

(1) Where two or more causes or matters are pending, and if it appears to the Court that — A

(a) some common question of law or fact arises in both or all of them;

(b) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or B

(c) for some other reason it is desirable to make an order under this rule, the Court may order the causes or matters to be consolidated on such terms as it thinks just or may order the causes or matters to be tried at the same time or one immediately after another or may order any of the causes or matters to be stayed until after the determination of any other of the causes or matters. C

(2) An order for consolidation shall be made in Form 1 and shall direct that the cause or matter in which the application is made shall be carried on as or under such other cause or matter and that the title of such other cause or matter be amended by adding thereto the title of the cause or matter in which the application is made. D

(3) Upon such order being made, the file of the cause or matter in which the application is made shall be transferred to and added to the file of such other cause or matter, and the copy of the order shall be left in place of the file so transferred, and a memorandum of the transfer shall be entered in the cause book against the cause or matter so consolidated. E

**[18]** The main objective of consolidation is to save costs, time and effort, and to make the conduct of several actions more convenient by treating them as one action (see the Court of Appeal decision in *Osaka Resources Sdn Bhd & Ors v Foo Holdings Sdn Bhd and another appeal* [2014] 1 MLJ 461). The conditions in O 4 r 1 are to be read disjunctively such that satisfaction of any one of the conditions would suffice. F

*Whether there are common questions of law or fact* G

**[19]** There can in my view be no common question of law for this Suit 843 which alleges conspiracy and fraud since the claim here is contractual in nature and involves issues concerning the formation of contract whilst for the defamation suits on the other hand are based on claims of tortious liability. These are wholly different principles of law. H

**[20]** In Suit 843, the plaintiffs are challenging the validity of the agreements and instruments executed for the KLVA Project on the primary grounds of illegality under s 3(3)(c) of the Land Development Act 1956 (whether the said provision was complied with vis-à-vis the KLVC Project and whether the agreements and instruments for KLVC Project were valid and enforceable) and of conspiracy to injure, involving fraud and breach of fiduciary duties against the first 20 defendants. I

**[21]** The causes of action for the defamation suits is predicated on the law of tort. The subject matter are the defamatory statements allegedly published by the defendants therein. The issues to be determined in the defamation suits would be the usual in any defamation action as established under the law which revolve around the questions whether the statements are defamatory, whether they refer to the plaintiffs, whether they were published to a third person, and whether the defendants are entitled to the defences pleaded.

**[22]** It is trite that a suit is determined within the confines of the pleadings of parties and the evidence adduced in support during the trial of the suit. Suit 843 involves pleadings and evidence that are outside the ambit of the defamation suits. It is legally flawed for parties in the defamation suits to be bound by findings that are outside the pleadings of these respective suits and be bound by evidence that they are unable to test in trial.

**[23]** There is a common subject matter in the defamation suit in that the alleged defamatory statements revolve around the Synergy Promenade (the seventh defendant in this Suit 843), the KLVC project and the first plaintiff's loss of its Semarak lands. But the main consideration here is that many elements arise only in one suit but not in the other. For instance in pleading fair comment, an evaluation must be made in the defamation suits whether the comments in question related to a public interest matter. But this is entirely not relevant in Suit 843.

**[24]** Further, NSTP and its two journalists in the defamation suits have stated that quite apart from relying on the defence of justification, they would also be employing the defamation-specific defence of *Reynolds'* privilege, which determination has nothing to do with Suit 843.

**[25]** The said common issues articulated by the plaintiffs in this Suit 843 are their own interpretation of the factual and legal questions which they think they need to answer in order to obtain the reliefs that they seek which include to set aside the relevant contractual agreements. However the plaintiffs in the defamation suits take the view that there is only that one common subject matter of the KLVC Project. I agree with the submission of the plaintiffs in the defamation suits that such a common subject matter does not relate to any common question of law or fact between this Suit 843 and the defamation suits.

**[26]** In other words, a mere common subject matter, with no common question of law or fact, is simply insufficient to justify the granting of the order under O 4 r 1 for this court to try the Suit 843 and the defamation suits, the former before the latter. In the case of *Ng Joo Soon @ Nga Ju Soon v Devechem Holdings (M) Sdn Bhd and Ors* [2010] MLJU 1854 the court expressed the

following:

> [13] Yet another consideration which weighed against the grant of the orders sought was in the common question/fact identified. The Respondents' claim of the Petitioner's 'Self Serving Scheme' as the common question of law and/or fact was in fact only the views expressed from the Respondents' perspective. *To me, this missed the point that in framing and identifying common questions of law and/or fact, it must surely be considered from the perspective of the whole case and having regard to the arguments put forth by all sides.* As mentioned earlier, the defences filed in the Shah Alam Suit which has since been consolidated with the writ action from Johor Bahru or even the cause papers in that latter action were not made available for consideration. Other than that allegation of a pursuit of a 'Self-Serving Scheme', there was actually no question of law or even fact identified for consideration. With the examination of the factual matrix, the reliefs sought in both proceeding and the other matters that have been discussed, I cannot also see how the matter of conflicting decisions can arise. (Emphasis added.)

**[27]** Regard may also be had to the case of *Ahmad Amryn bin Abd Malek & Ors v Bursa Malaysia Securities Bhd* [2021] 8 MLJ 948; [2021] 2 CLJ 222, where the High Court held that:

> [17] In my considered view, at first blush there does not appear to be a sharing of a common subject matter in the current suit and in OS146, i.e. the powers of Bursa to impose fines. However, a mere sharing of a common subject matter alone is not a sufficient ground for an order to consolidate the two matters.

**[28]** It would thus be incorrect for the plaintiffs here to contend that if they are successful in this Suit 843, then defamation suits will fail because the defendants in the defamation suits would be able to succeed in their defences of justification and fair comment. At best this is a misleading submission since regardless of the outcome of this Suit 843, the defendants in the defamation suits will still have to prove their defences on the basis of the established principles of the law on defamation.

**[29]** As such, there are in truth no real risks of inconsistent findings or res judicata should the trial of the defamation suits is to precede that of this Suit 843.

**[30]** I also cannot disagree with the suggestion that to address this issue of inconsistent findings and res judicata, parties in this Suit 843 and the defamation suits could try adopt the common stance that the findings in the defamation suits will not bind this Suit 843, and vice versa.

*Whether the rights to relief are in respect of the same series of transactions*

A **[31]** The reliefs sought in the defamation suits are an injunction restraining the defendants from further speaking, publishing or causing to be published the alleged defamatory statements, and special, general as well as aggravated or exemplary damages.

B **[32]** The key reliefs sought in Suit 843 are a declaration that the agreements and instruments executed for KLVC Project are unenforceable, null void ab initio; and damages against the 20 defendants.

C **[33]** It cannot be denied that whilst the rights and relief claimed in the defamation suits - confined to damages, and in this Suit 843 arise out of the same transaction, they are entirely different in nature.

**[34]** Because the defamation suits are tortious in nature and the reliefs, if
D awarded, are based on entirely different principles to those in this Suit 843 which are contractual in nature and relates to issues surrounding the formation of contracts, the plaintiffs cannot be prejudiced if the defamation suits precedes the determination of the Suit 843. Nor can there be true inconsistency since the suits involve different principles of law. This is not to mention that the court
E will in any event be bound by the well-entrenched principle of stare decisis.

*Whether there are some other reasons making it desirable to make an order to consolidate*

F **[35]** It should be noted that the plaintiffs did argue that the parties in the defamation suits (the three suits therein) have earlier agreed for them to be tried together even though the parties therein are not identical. As such, the second, fifth, sixth and seventh defendants as well as NSTP and its two journalists should not be allowed to blow hot and cold in their resistance to the instant
G application.

**[36]** In the final analysis, this court inevitably will be required to make findings and decisions on the common issues in light of the positions taken by the parties in Suit 843 and defamation suits on the propriety of the dealings in
H the KLVC Project.

**[37]** The paramount consideration in this encl 206 is whether there would be risks of inconsistent findings and decisions in respect of the common issues if Suit 843 and defamation suits are tried separately (see the Court of Appeal
I decision in *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd*).

**[38]** It cannot be emphasised enough that the court should make an order under O 4 r 1 where there is a risk that two inconsistent judgments will come into existence if the order is not made. The former Federal Court in *Central*

*Securities (Holdings) Bhd v Haron bin Mohamed Zaid* [1979] 2 MLJ 244, in the judgment written by Raja Azlan Shah CJ (Malaya) (as His Royal Highness then was) held thus:

> *The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is 'some common question of law or fact bearing sufficient importance in proportion to the rest' of the subject-matter of the actions 'to render it desirable that the whole should be disposed of at the same time'* (*Payne v British Time Recorder Co* [1921] 2 KB 16 *Horwood v British Statesman Publishing Co Ltd* [1929] WN 38 *Daws v Daily Sketch* [1960] 1 WLR 126; [1960] 1 All ER 397. Where this is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same.
>
> Now, the causes of action in this third party proceeding and Civil Suit No 2323 of 1976, where the plaintiffs and the defendants are the same, arise out of the same series of transactions, i.e., purchase of United Holdings shares and short delivery of such shares, and in our view there are questions of fact or law common to them, e.g., where rescission is a common element of relief, it is only necessary to prove that there is misrepresentation, innocent or fraudulent.
>
> We may add that in such circumstances, one of the tests in deciding whether consolidation should be ordered is to determine whether two inconsistent Judgements will come into existence if it is not ordered'. (Emphasis added.)

**[39]** But as highlighted above, it is imperative for this court to ascertain that the common questions are genuinely of sufficient importance in proportion to the rest of the subject matter of the suits in contention. This, in my view, is where the plaintiffs fall short. Whilst a common subject matter may exist, that alone is outweighed by other questions that could potentially arise from the Suit 843 and the defamation suits. It will be readily appreciated that other aspects of the suits have given rise to other compelling considerations that militate strongly against the granting of the order as now sought by the plaintiffs in this Suit 843.

Mostly different parties in different suits

**[40]** First, there is the weighty issue about the different capacities of the parties in the different suits. For some, their roles are reversed. For instance, the plaintiffs in the defamation suits are the fifth, sixth and seventh defendants in this Suit 843.

**[41]** This means that a consolidation herein would result in a cross action. The High Court in *Sykt Multi Wood v Foosan Timber Industries Sdn Bhd & Anor* [1992] 3 CLJ Rep 623, dismissed the plaintiffs' application for consolidation by reason that a cross-action, where the plaintiff in one proceeding is the defendant in another, cannot be consolidated. The High Court ruled as follows:

A Cross-actions, in my opinion, cannot be consolidated. In a consolidated action, the plaintiffs are in the same condition as co-plaintiffs. In the case of cross-actions this is impossible because the plaintiff in one action is the defendant in another. The same person cannot be both a plaintiff and a defendant in an action. *Ellis v Kerr* [1910] Ch 529 @ 537.

B

**[42]** At the same time the defendants in the defamation suits specifically Suit 31 and Suit 22 are not even parties in this Suit 843. The plaintiffs here are not parties in the defamation suits. 17 defendants in this Suit 843 are also not parties and cannot participate in the defamation suits. Conversely, the C defendants in the defamation suits, namely, NSTP, Che Wan Badrul Alias and Ahmad Suhael Adnan are not parties and cannot participate in this Suit 843.

**[43]** All the parties in the defamation suits are against this application. The applicants, namely the plaintiffs in this Suit 843 who asked for this Suit 843 to D be heard before the defamation suits are not even parties to the defamation suits.

**[44]** It is also to be observed that when there are parties in one suit who are not parties in the other suit, the application should be refused. In the case of *Ng* E *Joo Soon* it was held that:

> [15] ... In fact, prejudice and embarrassment may be occasioned especially to third parties like the 2nd and 3rd Defendants who are not parties in both proceedings if the application was allowed. Under such circumstances, it would certainly not be desirable for the application to be allowed.

F

**[45]** Here, out of the total 26 parties in the defamation suits and this Suit 843, there are only four parties that are present in both. These 22 parties would suffer prejudice and embarrassment if this application is allowed.

G

**[46]** In other words, although it may seem that time and costs would be saved, that would not actually be the case in view of the different plaintiffs, different causes of action, different issues and different arguments. Indisputably, a consolidation in this case would not outweigh any savings on H time and costs, and serve only to complicate and delay the just, expeditious and economical disposal of especially the defamation suits and this Suit 843.

**[47]** It should also be observed that in *MBf Capital Bhd & Anor v Tommy Thomas & Anor* [1998] MLJU 506; [1998] 3 CLJ Supp 390 the High Court in I disallowing the consolidation application held that a litigant should not have to pay for unnecessary cost to spend time listening to matters and evidence that do not concern him.

**[48]** Further, in the case of *Hiwood United Sdn Bhd v All Season Realty Sdn*

*Bhd & Ors* [2018] MLJU 735; [2018] 1 LNS 743, it was held that:

> [23] The plaintiff's counsel submitted that there are common parties and witnesses in both the suits. That submission does not warrant this court to allow the plaintiff's application because having common parties and witnesses in the two suits is not the deciding factor for this court to grant the order. This submission would carry weight only if the common parties could have been joined as parties within the rules as envisaged in O 15 r 4 of the Rules of Court 2012 — Joinder of parties (see Federal Court decision in *Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid* [1979] 2 MLJ 244).

**[49]** Even though there are four parties involved in both Suit 843 and the defamation suits, only the second defendant (Tan Sri Sharil bin Ab Samad) is named as defendant in both proceedings. This is the one and only common defendant in Suit 843 and the defamation suits.

**[50]** Moreover, reliance by the plaintiffs on the case of *MCAT Gen Sdn Bhd v Celcom (Malaysia) Berhad* [2007] 8 MLJ 277 is not entirely valid for the plaintiffs in the different suits there are the same whilst the plaintiffs in the case before this court in Suit 843 are not the plaintiffs in the defamation suits.

**[51]** It ought to be stated that the leading case of *Central Securities (Holdings) Bhd* too involved the same parties, unlike the situation now before this Court. And in the case of *Datuk Chen Lip Keong & Anor v Datuk Mohd Fathi bin Haji Ahmad and another action* [1994] 1 MLJ 1, although the plaintiff in the first suit was also the defendant in the second suit, unlike the instant case before me, there was however no objection raised by the counsel for the plaintiff in that second suit for both matters to be consolidated.

**[52]** The plaintiffs here at the same time are essentially seeking for Suit 843 to be determined first whilst the defamation suits be stayed, effectively also seeking for the parties in the defamation suits to be bound by the findings in Suit 843 in respect of the common issues as asserted.

**[53]** However, in Suit 843 the burden is on the plaintiffs to prove the said common issues insofar as they relate to the alleged conspiracy. But in the defamation suits, the burden is on the defendants, namely Tan Sri Sharil (also the second defendant in Suit 843), NSTP and its two journalists to prove the common issues to the extent they relate to their respective defences for defamation. Thus the parties to the defamation suits would be prejudiced if they are not afforded the opportunity to prove their own case in the manner they deem fit and instead be bound by the findings made in a trial that is prosecuted outside their control.

**[54]** For instance, FELDA as the first plaintiff in Suit 843 has the burden to prove the alleged conspiracy that the Semarak lands had been, say, fraudulently appropriated via the relevant sale and purchase agreements. For Tan Sri Sharil, as a defendant in one of the defamation suits, in pursuing the plea of justification he has the onus of proving that the said sale and purchase agreements were indeed fraudulent. However, he is also the second defendant in Suit 843.

**[55]** In this Suit 843 be may expectedly be reliant on evidence produced by FELDA to prove the same fact that he may wish to establish, yet he is a defendant in that proceedings. For Tan Sri Sharil (a defendant in the defamation suits and the second defendant in Suit 843) there may thus be a real risk that he is bound by any failure of the plaintiffs to prove their case in Suit 843 where he is the second defendant. On the other hand, the other defendants in the defamation suits namely NSTP and its two journalists are not parties to the Suit 843 and do not face such risks.

**[56]** And not only that. The second, fifth, sixth and seventh defendants in Suit 843 too would potentially be placed in a difficult and embarrassing position as they appear as parties in the relevant actions in the defamation suits, giving evidence against one another, but at the same time are co-defendants in the Suit 843 giving evidence against the two plaintiffs. The risks of self-incrimination, of giving of evidence in part or by way of instalments, and in the re-calling of witnesses, cannot be easily dismissed.

Different sets of solicitors

**[57]** Yet another concern with consolidation or having the suits heard together or one immediately after the other is the question of legal representation of the various parties. The facet of complexity is the different sets of lawyers involved in the two groups of proceedings. There are 14 firms of solicitors acting for their respective clients in the Suit 843 and three firms of solicitors acting for their respective clients in the defamation suits.

**[58]** The parties who appear in both Suit 843 and the defamation suits namely the second, fifth, sixth and seventh defendants have engaged different firms of solicitors in the different proceedings. The second defendant appointed Messrs Daniel & Wong to represent him in the defamation suits (Suit 26) but engaged Messrs Ranjit Singh & Yeoh in the Suit 843. The fifth, sixth and seventh defendants have Messrs Ken St James in the defamation suits but engaged Messrs Amrit & Company to represent them in the Suit 843. It is a general rule that co-plaintiffs must be jointly represented by a single firm of lawyers. Here, the plaintiffs in the defamation suit are the fifth, sixth and seventh defendants in the Suit 843.

**[59]** In *Ng Joo Soon* the fact that different solicitors were representing the parties in both proceedings were also taken into account by the High Court in refusing the consolidation. And In *Hiwood United Sdn Bhd* it was also observed by the High Court thus:

> [26] Another point to be observed is that there is no common plaintiff in the two suits, therefore, there is no common representation by a single firm of solicitors.

**[60]** This separate representations would likely render the consolidation inconvenient if not impractical, resulting in unnecessary waste of precious judicial time, of costs as a large number of solicitors will be required to be present in court for case managements of matters which do not concern their clients, as well as other challenges such as the difficulty of fixing trial dates in view of the large number of parties and solicitors involved, and the situation where the solicitors represent the 21 defendants in the Suit 843 will have to hear and examine the evidence and testimony given by witnesses in open court in the Suit 843 and the defamation suits, and vice versa. Certain defendants in the Suit 843 are also witnesses in the defamation suits.

Delay in making this application

**[61]** Another factor that militates against the cases being consolidated, tried together or tried one after the other is this. The plaintiffs in this Suit 843 too only filed this application when the Court was ready to fix new trial dates for the defamation suits.

**[62]** No convincing or reasonable explanation was proffered to justify this late filing when the Suit 843 was filed about one year prior, and where the defamation suits were instituted even earlier, about one year before the filing of Suit 843.

**[63]** The plaintiffs could also be said to be potentially guilty of laches for the delay in the filing of this application. Their averment that they only came to know about the defamation suits on 12 November 2020 is difficult to accept, given that the very first of the defamation suits (Suit 26) was filed on 4 June 2018, some two and a half years prior. It is also unfair to have the defamation suits hanging over the heads of the parties, probably potentially indefinitely because of the uncertainty as to when Suit 843 would be ready for trial.

**[64]** It is worthy of emphasis that the very first of the defamation suits (Suit 26) was filed some two and a half years ago. And it cannot escape one's attention that this Suit 843 at the same time is very much in a state of limbo in light of the pending interlocutory appeals and stay applications.

**[65]** Given the situation on the status of the Suit 843 and the defamation

suits, it is not unfair or wrong to contend that if this application is allowed, the parties in the defamation suits would most probably have to endure a long wait before they are given the opportunity of being heard or having the merits of their case adjudicated on. That is simply and patently unfair.

**[66]** Resort to O 4 r 1 of the RC 2012 in my view is plainly unsuited in a situation where one of the suits is at an advanced stage of the proceedings, in comparison to the other. Here, the defamation suits are ready for trial and ought to have started on 26 October 2020 if not for the Movement Control Order in force then.

**[67]** This is in contrast to this Suit 843 which has not even reached the stage of the close of pleadings. The defamation suits should therefore be allowed to proceed in a just, expeditious and economical manner unimpeded by the status of this Suit 843. And this is not to mention the complexity about the multiplicity of parties and legal representations in this Suit 843 and the defamation suits, as highlighted earlier.

CONCLUSIONS

**[68]** It bears repetition that the parties in this Suit 843 and the defamation suits are not the same. Only four defendants in Suit 843 are parties in the defamation suits of which only the second defendant is named as defendant in both Suit 843 and the defamation suits. The said other three defendants in Suit 843 are instead the plaintiffs in the defamation suits. More so, the same parties in the different suits are represented by different counsel. This state of affairs does not promote an efficient and a fair trial process.

**[69]** Although I accept there may be some degree of overlap on the subject matter, fundamentally it is plainly obvious that the causes of action in these different suits are not the same. The key issues and reliefs too are different. Having the Suit 843 and the defamation suits consolidated, tried together, or tried one after the other, pursuant to this application which was filed late by the plaintiffs in Suit 843, would additionally serve only to delay the start of the trial of the defamation suits given that the defamation suits have already been set for trial but that parties in Suit 843 have not even closed their pleadings. In other words whatever few common factors in these Suit 843 and the defamation suits that may exist, they are far outweighed by these competing considerations. Based on the test formulated in *Central Securities (Holdings) Bhd* these common facts or subject matter are not of 'sufficient importance in proportion to the rest' of the subject matter in the two proceedings.

**[70]** For the foregoing reasons, as discussed, I find that the objective of saving costs and time of parties cannot be achieved if the Suit 843 and the

defamation suits are consolidated, tried together or tried one after the other under O 4 r 1 of the RC 2012. It is manifestly not desirable for an order be made as per encl 206. The application is therefore dismissed, with costs.

*Application dismissed with costs.*

Reported by Muhamad Azham Marwan